

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Residential
Building Contractor License of
Keith Shafer Homes, Inc.,
License No. 3848

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on Thursday, August 15, 1996, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Fabian Hoffner, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of Keith Shafer Homes, Inc. The record closed on August 26, 1996, upon receipt of the Department's second affidavit of compliance.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact David B. Gruenes, Commissioner, 133 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

-

STATEMENT OF ISSUE

The issue in this case is whether Keith Shafer Homes, Inc., has engaged in fraudulent or deceptive practices, has performed negligently or in breach of contract so as to cause injury or harm to the public, has been shown to be incompetent, untrustworthy, or financially irresponsible, has had a judgment entered against it for failure to make payments to a subcontractor, has failed to appear as ordered before a representative of the Commissioner, has failed to produce a written response to a complaint as ordered, or has failed to produce documents or records pertaining to this

case as ordered, in violation of Minn. Stat. §§ 45.027, subd. 2, and 326.91, subd. 1(2), (4), (6), and (12) (1994); and, if so, whether the residential building contractor license of Keith Shafer Homes, Inc. is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and 326.91 (1994).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing and Order to Show Cause was served on Keith P. Shafer, Jr., Keith Shafer Homes, Inc., at 5411 Ojibway Avenue, Oak Park Heights, Minnesota 55082, by first-class mail on July 9, 1996. This is the Respondent's registered and last known address.

2. The Notice of and Order for Hearing and Order to Show Cause contained the following language:

If Respondent fails to attend or otherwise appear at the hearing in this matter after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved and Respondent's residential building contractor's license number 3848 may be revoked or suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.

3. On August 1, 1996, copies of the Notice of and Order for Hearing and Order to Show Cause and Notice of Service of Process Pursuant to Minn. Stat. § 45.028 (1994) were sent by Certified U.S. Mail to Respondent Keith P. Shafer, Jr., Keith Shafer Homes, Inc., at the Ojibway Avenue address, and a copy of the Notice of and Order for Hearing and Order to Show Cause was left in the Office of the Commissioner of Commerce.

4. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for continuance or any other relief. The Respondent did not personally appear at the hearing in this matter scheduled for August 15, 1996, or have an appearance made on its behalf.

5. Because the Respondent failed to appear at the hearing in this matter, it is in default.

6. Pursuant to Minn. Rules pt. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Order to Show Cause are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91 (1994).

2. The Notice of Hearing issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Department accomplished service of process on the Respondent by compliance with the provisions of Minn. Stat. § 45.028 (1994).

4. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules pt. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Order to Show Cause are hereby taken as true.

5. The Respondent has violated Minn. Stat. §§ 45.027, subd. 2, and 326.91, subd. 1(2), (4), (6), and (12). The Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and 326.91 (1994).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the residential building contractor license of Keith Shafer Homes, Inc., License Number 3848, and impose an appropriate civil penalty.

Dated this _____ day of August, 1996.

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

Reported: Default.